

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ROBERT MCKENZIE and CATHLEEN :
MCKENZIE, his wife : **Hon. Dennis M. Cavanaugh**

Plaintiffs, : **OPINION**

v. : Civil Action No. 06-CV-2803 (DMC)

HOWMET CASTING & SERVICES, :
INC. (for discovery purposes) STEVE :
SOE, RAE ROE, JOHN DOES 1-10 (a :
series of fictitiously named persons), ABC :
CORP. 1 -10 (a series of fictitiously :
named business entities), RONALD ROE :
1-5 (fictitious names representing a class :
of fictitious corporations, partnerships or :
individuals not yet known), PORTER POE: :
1-5 (fictitious names representing as yet :
unknown or undiscovered corporations, :
partnerships or individuals), RICHARD :
ROE (a fictitious name), ABC CORP. (a :
fictitious name), DEF CORP. (a fictitious :
name), GHI CORP. (a fictitious name, and :
continuing alphabetically through XYZ :
CORP. (a series of fictitious names), :
: :
Defendants. :

DENNIS M. CAVANAUGH, U.S.D.J.:

This matter comes before the Court upon motion by Defendants Howmet Casting & Services, Inc. (“Howmet”) motion to dismiss and upon Robert and Cathleen McKenzie’s (“Plaintiffs”) cross-motion to amend their complaint and remand this action to state court. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Civil Rule 7.1(I), no oral argument was heard. After carefully considering the submissions of the parties, and based upon the following, it is the finding of this Court that Howmet’s motion to dismiss is **denied** and Plaintiffs’ cross-motion to amend and

remand is **granted**.

I. BACKGROUND

On July 25, 2005, Plaintiff Robert McKenzie suffered an on-the job injury while working at Defendant's plant in Dover, New Jersey. Plaintiffs filed suit in the Superior Court of New Jersey on May 17, 2006, naming Defendant "for discovery purposes" and several unidentified defendants. In the complaint, Plaintiffs sought relief under various negligence and product liability claims.

Defendant Howmet removed to this Court on June 21, 2006. Howmet moved to dismiss Plaintiffs' Complaint because Plaintiffs sued Defendant for "discovery purposes only." Plaintiffs filed a cross-motion, seeking leave to amend the Complaint to name Consarc Corporation, Inductotherm Corp., and Lectotherm, Inc., Investment Casting Institute as defendants and also to have this action remanded to state court because there is a lack of complete diversity.

II. DISCUSSION

A. Leave to File An Amended Complaint

Leave to amend complaints is to be "freely given when justice so requires." Fed. R. Civ. P. 15(a). In this case, Plaintiffs seek leave to amend their Complaint and join Consarc Corporation, Inductotherm Corp., and Lectotherm, Inc., Investment Casting Institute. Plaintiffs have only recently learned the identity of these potentially liable parties. As the Complaint stands, Plaintiffs have no recourse against Howmet, who was sued discovery purposes only, or any of the fictitiously named defendants. For these reasons, this Court concludes that the interests of justice require granting Plaintiffs' motion to amend their Complaint.

B. Plaintiffs' Cross-Motion to Remand

In allowing Plaintiffs to amend the Complaint, this Court's diversity jurisdiction will be destroyed. Two of the parties Plaintiffs seek to name in the amended Complaint are New Jersey

citizens; namely, Consarc Corporation and Inductotherm Corporation. Because Plaintiffs are also New Jersey citizens, there will be a lack of complete diversity. See 28 U.S.C. 1447(e). For these reasons, Plaintiffs' motion to remand is hereby granted.

C. Defendants' Motion to Dismiss

Defendants' motion to dismiss for lack of jurisdiction is rendered moot because this action is being remanded to state court.

III. Conclusion

Based on the foregoing reasons, this Court hereby **denies** Defendants' motion to dismiss Plaintiffs' Complaint for failure to state a cause of action and **grants** Plaintiffs' request to file an amended complaint and remand this action to state court.

S/ Dennis M. Cavanaugh

DENNIS M. CAVANAUGH, U.S.D.J.

Date: November 3, 2006
Orig.: Clerk
cc: Counsel of Record
The Honorable Mark Falk, U.S.M.J.
File